

**RUMSON PLANNING BOARD
REGULAR MEETING
JULY 7, 2008
MINUTES**

Chairman Lospinuso called the meeting to order at 7:30 p.m. with the Pledge of Allegiance. The requirements of the Open Public Meetings Act were stated as met. The roll was called, with the following members present: Lospinuso, Rubin, Casazza, Campbell, Shanley, York, Gummer, Vaughan, Hewitt, Ekdahl, White (arr. 8:05 p.m.). Also present: Michael Steib (Board Attorney), Bonnie Heard (T&M Assoc.), Fred Andre (Zoning Officer), and State Shorthand.

Approval of Minutes (May 5th and June 2nd Meetings)

Mr. Casazza moved to approve the minutes, and Mr. York seconded. Voice Vote: Ayes, unanimous.

Chairman Lospinuso announced that the application of **Hollis Colquhoun, 50 Bingham Ave.,** will be carried to the August 4th meeting. No further notice will be required.

Chairman Lospinuso commented on the Fourth of July celebration, thanking Mayor Ekdahl for the great job that was done.

Paula Schildge & Stacey Cohen, 88 & 90 Buena Vista Ave., Continued Minor Subdivision Application

Mr. Steib reviewed the last hearing, noting the issue of tree removal, for which the applicant has provided additional information:

- A-21 _ Plot plan and tree removal review, dated 7/2/08;
- A-22 _ Letter from Roger Foss, attorney, dated 6/27/08;
- A-23 _ Tree Plan;
- A-24 _ Plot plan & tree removal plan for Lot 8.02, dated 6/25/08;
- A-25 _ 19 photos showing trees on the property.

It was explained that the tree removal plan indicates 13 total trees will be removed within the building footprint, six of which meet the definition of specimen trees, although none meet the definition of substantial specimen trees. The applicant will need a tree removal permit, but no relief from this Board.

Roger Foss, attorney, appeared on behalf of the applicants. He has their tree expert and planner present for testimony. They have attempted to show the trees that are specimen and significant specimen trees. They have also listed all the trees on the property (106 trees). He pointed out a footprint that shows the front edge of the building at the 100_ setback. There are 13 trees within the footprint of a proposed home, some of which are specimen, but no significant specimen trees. Everything within the footprint would need to be removed, if the maximum-sized house were to be built.

Chairman Lospinuso asked Mr. Foss to describe the colorations on their plan, which he did:

- Green trees - Specimen trees (at least 18_ in diameter);
- Red trees - Significant specimen trees (60% of the size of the largest trees as identified in the county list as significant specimen trees).

Norma Monte, 85 Buena Vista Ave., was sworn in and stated her objections to the application. She thinks this proposal violates the character of the town, which is being cluttered with huge homes on small pieces of property. She noted the low land situation and the water problems in the area.

Steve Cooper, 16 Conover Lane, was sworn in and read a prepared statement which stated his opinion that the application should be denied. He does not think the trees should be removed so someone can make money, and he thinks it is a mockery of the existing shade tree law. He also thinks the water/flood situation is already bad, and this would add to the problem, even though the engineer has testified it would not add to the problem. He mentioned the ongoing home construction his street, many of which caused the removal of specimen trees. He noted that the applicants will be moving, but the neighbors will be staying. He thinks this development is unfair to the neighbors.

Mr. Cooper asked if the newly-proposed position for the footprint would have any affect on the water run off. Mr. McHeffey, project planner, was again sworn in and said moving the house forward would not change the proposed grading. He again stated that all the runoff would go to the south of the property, which currently floods _ that being the nature of the property. This flooding dries up after a day or so.

Chairman Lospinuso asked about the proposed footprint and if it included any secondary structures. Mr. McHeffey said their footprint assumes that a garage would be attached and no other buildings would occur. The house could be 50_ x 90_ in size, for a total of 9,000 sq. ft. This would be the largest home that could be built on the lot.

Mr. Casazza asked Mr. McHeffey about the current drainage, and Mr. McHeffey explained the system that would be designed for this property, including French drains, taking the water to the ground as it now does. Mr. Casazza noted that they are adding impervious surfaces, and Mr. McHeffey said the water would be going directly into the ground. The roof gutters would go into a piping system and drainage system that would go around the house. The water percolates into the ground and would not have any adverse impact on visible runoff. Mr. Cooper commented that he has lived on the street for 15 years and has witnessed water sitting for days and days, with the ground not able to absorb the rain. He thinks the extra water will definitely run off, even though the engineer said this would not happen.

Paula Schildge was sworn in and said she has lived on the property for 24 years. She described the area after a heavy rain, noting that it puddles, but there is a lot of grass and it is not the extreme situation described by Mr. Cooper. She has had her landscaper cut the grass the day after a heavy rain with no problems.

Chairman Lospinuso asked Mrs. Schildge for her thoughts about the comments heard this evening. She said she hoped the application would not disturb the town and was something that would be very doable and not change the nature of the street. She is surprised at the negative comments heard. She thought it was a good idea to create a conforming lot, which she has done. She can understand the sensitivity of the neighbors, and she also understands that the Board must consider their comments. Dr. Lospinuso noted that the Board must also follow the ordinances of the town.

Mr. Casazza commented on the condition of the real estate market and questioned whether this was a good plan at this time.

Chairman Lospinuso commented that the Board does not want to see the town become a congested area, and he noted that the town considers trees very special and protected.

(Mrs. White arrived at this time _ 8:05 p.m.)

Mrs. Gummer asked Mr. McHeffey if he saw anything that would put the neighbors at risk, and he said he did not. They would be following the borough ordinance as to drainage.

Kevin Slavin, tree expert, was sworn in and offered his credentials, which the Board accepted. He was asked about the age of the trees, and he thought the largest tree was a 34_ silver maple, less than 100 years old. The photos presented show trees with a red dot, and these would be the trees to be removed. Mr. Shanley questioned the total number of trees that would need to be removed in order to provide a house and driveway, and Mr. Slavin stated 13 trees would need to be removed, in order to provide the footprint as shown.

Mr. Vaughan asked about protecting the trees shown in orange (significant specimen trees), and Mr. Slavin said these should be fenced off at the tree line. The largest tree on the site, a pin oak, could definitely be saved, due to the distance from the foundation, according to Mr. Slavin. It was his opinion that a house of this size could be built without impacting the significant specimen trees shown on the plan. He noted that there would still be over 100 trees on the lot after construction. The view from Conover Lane shows a heavily wooded view.

Chairman Lospinuso asked Mrs. Schildge if she had a developer for the property, and she stated she did not.

Mrs. White questioned asked if the person who purchased the property would be made to abide by the decisions of the Board this evening. Mr. Steib explained that if someone came in and wanted to change the location, causing an impact to significant specimen trees, they would need to come back before the Board.

Mrs. Gummer asked what would happen if the developer came in with a different grading and drainage plan, and Mr. Steib explained how they would also need to show how the drainage would not affect the neighbors.

Mr. Casazza would like to see more detail on the drainage, including percolation tests. He does not accept the design of a 3_ drain providing adequate drainage for the amount of water in this area, which is already strained.

Mr. Vaughan commented that people are troubled with the existing drainage, and the Board wants to make sure that under no circumstances would this exacerbate the situation. Mr. Foss said this type of drainage plan would be submitted when a building permit is sought. Mr. Steib advised that the borough official will request to review the proposed drainage and building plan to make sure it meets the qualifications of the town.

Chairman Lospinuso summarized that the applicant first came before the Board with the application to subdivide the property, subsequently joining with the neighbor to provide a conforming lot, except for a 6_ lot shape circle diameter, which will not be changed by this application. The Board has questioned the drainage, specimen trees, lot coverage, size of the potential envelope, and heard the input from the neighbors.

The Board felt there was enough information to take a vote this evening. Mr. Steib reviewed that the applicant is proposing a three-lot subdivision. Two of the lots have existing homes. There will be a continuation of the existing nonconformities, which he preceded to list. The new variance is for the

proposed Lot 8.02, which will have a new structure and does not conform to the lot shape diameter. The applicant agreed to comply with all technical comments in the engineer_s review, which would be a condition of approval.

Comments from the Board were heard at this time:

- Chairman Lospinuso feels they have complied with the Board's requests made at the two prior hearings. He is not happy with the application, and he thinks most members of the Board would agree that they do not want to see more subdivisions; however, this applicant has gone to the extent to purchase additional property to provide a conforming lot. He does not think the 6' variance for lot shape is enough to deny the application.
- Mrs. Gummer asked Mr. Steib to explain the Board's jurisdiction, and he explained that the Planning Board considers site plans and subdivisions, unless there is a 'D' variance involved, in which case it goes to the Zoning Board. Since the Board has legal jurisdiction, they can grant variance relief and approve the subdivision, which could be subject to conditions to make sure that the subdivision is developed according to the plans submitted and the requirements of the zoning ordinance;
- Mr. Casazza thinks the applicant has done a good job in hearing the concerns of the Board and the public. He would be willing to vote 'yes', although he is still concerned with the drainage. He asked if the Board could require they go above the normal conditions in this case. Mr. Steib stated he does not know what the ultimate proposal would be. The Board can put in language in a resolution, but he does not think they can go beyond this;
- Mr. Vaughan agrees that there should be a zero net affect of runoff with this application. He thinks the applicant did a fine job working with the Board to address the concerns of the neighbors. He agrees with Chairman Lospinuso that they would not be in favor of more development, but it is not this Board's job to decide this, but only to follow the laws set forth by Mayor and Council. He thinks it would be improper for this Board to deny the application. He was troubled by the complaints of many of the neighbors regarding the construction problems that are occurring in this area. He thinks the town professionals do an excellent job and should be made aware of this type of problem. The drainage has been addressed. He would like to make sure that any damage to the trees would require remediation.

Mrs. Campbell moved to approve the application, and Mr. Casazza seconded.

Roll Call Vote: Ayes _ Lospinuso, Gummer, Campbell, Hewitt, Shanley, Casazza, Vaughan
Nays _ Rubin, Ekdahl, York

Motion carried.

Nicholas Adamson, Arthur Adamson, III, and James Adamson, 26 Osprey Lane, Continued Minor Subdivision Application

Arthur Sorenson, attorney, appeared on behalf of the applicants. He reviewed that the question as to emergency access, raised at the last meeting, has now been addressed. He reported that a fire hydrant would be located in the common right-of-way, which would make the property safer. He pointed out that this is the first time a fire hydrant has been required inside a property in Rumson because it has a long, narrow driveway. He noted that his property also has a long driveway, but he was not required to have a fire hydrant on the property, and they also received a variance to build their house. He reported on several other properties with the same or similar configurations that also were not required to provide a

fire hydrant on their lot. He asked the Board to take this information into account when considering this requirement.

Walter Bronson, professional engineer, showed a revised plan for the driveway. The closest fire hydrant to the property is off Osprey Lane _ about 600' away. They would need about 1,000' overall length to the suggested location of the fire hydrant, which would cost about \$30-40,000. It is Mr. Bronson's experience that if the fire hydrant is put into the public right-of-way at 500', it would still cost \$15-

20,000. He explained that the fire truck would be parked on the main roadway and not block the driveway.

Mr. Vaughan noted that the Board asked for the input of the Fire Department, and this is the provision they suggested. Mr. Sorenson thinks it is a fairness issue, and he restated the prior information that many other houses were not made to conform to this requirement, even though they have similar configurations to this property.

Chairman Lospinuso asked if the Board has ever seen a requirement for a fire hydrant and then waived it, and no one could recall a fire hydrant ever being required.

Mr. Adamson was sworn in and recounted a past occurrence when a fire truck did come down the driveway with no problem; however, there was never a need for water to put out a fire.

Mr. Shanley suggested there might be a financial benefit to have a fire hydrant on a property of this type. Mr. Adamson noted that most insurance companies ask the distance to the nearest fire hydrant, with 1,000_ being an acceptable distance.

Mayor Ekdahl commented that the Zoning Board may have seen this type of request before, although this Board has not.

Mr. Hewitt noted the wetlands on either side of the driveway.

Mr. Adamson said he agreed that it could be safer, but he asked the Board not to be tougher on him than they have been on other applicants who have similar properties and were not asked to install a fire hydrant on their property.

Ms. Heard stated that the review of the Fire Department was a part of the T&M checklist.

Mr. York said he understands their reluctance to install the fire hydrant. He asked if they could possibly discuss this further with the fire official to reach a compromise. Mr. Adamson said he only heard about these costs today, and they have not had a chance to talk with the fire official as yet. Mr. York would not have problem with a compromise, as long as the fire official agreed.

Mr. Sorenson said they would be willing to install a fire hydrant on the street with no problem. Mr. Andre explained that a truck would need to be brought on to the lot to pump the water, since it cannot be pumped from 1,000_. Mayor Ekdahl thinks there may be an alternate proposal, such as a half turn to allow a fire truck to sit off the road; however, this would require CAFRA approval.

Linda Stewart, 18 Osprey Lane, was sworn in and spoke on behalf of herself and her neighbor, John Ketterer. She distributed copies of a letter she wrote, which she proceeded to read for the record (marked

O-1, 7/7/08), stating no objection to the subdivision, but she does have an objection to raising the road at the end of Osprey Lane and providing the access to the new road. She is not comfortable with the report from the applicant_s engineer or the DEP regarding the flooding affect in the area.

Mr. Casazza commented that the objectors should have brought in their own engineer two months ago, when they were told of this application. He understands the concerns regarding the flooding in the area, but he does not think the applicant should be made to come back for an additional hearing.

Mr. Sorenson would object to allowing this, since the plans were available for some time. Their engineer testified on the water flow, stating that it would not adversely affect the Stewart_s property. He thinks it

is late for Mrs. Stewart to now say she wants her own engineer. She was aware of this testimony last month, and could have had her witness here this month. He thinks this has been addressed by the engineer.

Mr. Vaughan noted that the expert testimony was that no adverse affect would be felt, and if this is not correct, they would have legal recourse.

Mrs. Stewart feels they would be better served by an independent assessment. Chairman Lospinuso noted that the DEP has also been contacted, and this would be the third party opinion. Mrs. Stewart was sent a notice by the applicant of this application.

Mr. Bronson again explained the flooding that occurs on Osprey Lane, which is caused by the Atlantic Ocean. The raising of the road will not make the water go up any higher.

Mark Stewart, 8 Serpentine Dr., Monmouth Hills, was sworn in and offered his opinion that when the river rises, it spills over, and if they raise the road, the water may be impeded from spilling over it, and will spill back on to local properties.

Chairman Lospinuso thinks Mrs. Stewart's issue is with the DEP, who has the jurisdiction as to the level of this driveway. He suggested Mrs. Stewart be able to hire an independent assessor to review the testimony of the Board and the applicant's experts. Mr. Shanley thinks this is a viable option and should be considered.

Mr. Sorenson thinks this is a late hit. Mrs. Stewart was at the last meeting when the Board heard her comments and opinions. The borough engineer has approved this plan, and the only questions were with the fire hydrant. Mrs. Stewart could have done this during the month to get her second opinion before this meeting.

Mr. Vaughan agrees with Mr. Sorenson and cited from the minutes regarding comments made regarding the approval from the DEP.

Mr. Adamson said he does not propose construction right away, and construction on the road will probably not be done until next spring.

Mrs. Stewart wants their comments regarding the flooding impact be made a part of the record, in case any adverse affect occurs in the future as a result of this construction and the elevation of the road. Mr. Sorenson said if there had been a request at the last meeting to allow them to hire an engineer, he would have had no problem; however, to do this now would be unfair to his client.

There being no further discussion heard, Councilman Rubin moved to approve the application, with the condition that the fire hydrant location be determined, and the notation that the applicant has agreed to the technical comments in the T&M review. They will also not be utilizing the second story of the garage as living space. Mr. York seconded.

Roll Call Vote: Ayes _ Lospinuso, Rubin, Gummer, Campbell, Hewitt, York, Ekdahl, Vaughan, White
Nays _ Shanley, Casazza

Motion carried.

Proposed Ordinance Amendment

Mr. Steib reviewed the amendments to the zoning ordinance regarding repositioning the boundary line between the R-5 and General Business Zones. Ms. Heard explained that the ordinance will be shifting the General Business Zone boundary so that it is consistent with the lot lines and shifting the adjacent public

space zone. The ordinance says that the zone lines should follow property lines. This change is consistent with the purpose of the Master Plan. Mr. York moved to recommend the changes, and Mrs. Campbell seconded.

Roll Call Vote: Ayes _ Lospinuso, Rubin, Gummer, Campbell, Hewitt, York, Ekdahl, Vaughan, Shanley,
Casazza, White

Nays _ None

Motion carried.

There being no further business at this time, motion was made and seconded to adjourn the meeting.

Voice Vote: Ayes, unanimous. The meeting was adjourned at 9:40 p.m.

Respectfully submitted,

Patricia Murphy